

SENATE BILL 603

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2003 Regular Session
3r1851
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By: **Senator Kelley**

Introduced and read first time: February 5, 2003

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Tobacco Product Manufacturers - Nonparticipating Manufacturers -**
3 **Escrow Requirements**

4 FOR the purpose of requiring tobacco product manufacturers whose cigarettes are
5 sold in the State to periodically submit certain certifications, reports, and
6 notices to the Comptroller and to the Attorney General; requiring the
7 Comptroller to maintain a directory of cigarettes approved for stamping and
8 sale; prohibiting the stamping or selling or importing of cigarettes not in the
9 directory for sale in the State; requiring manufacturers to appoint an agent for
10 the service of process; requiring reporting of information by licensed
11 wholesalers; prescribing certain penalties, remedies, and enforcement
12 procedures; authorizing the Comptroller to adopt regulations requiring certain
13 escrow payments; requiring the Governor to make a certain appropriation from
14 the Cigarette Restitution Fund each year under certain circumstances;
15 providing for construction of this Act; providing that a certain act controls one of
16 the provisions of this Act under certain circumstances; making the provisions of
17 this Act severable; requiring a certain report to be filed by a certain date;
18 requiring a certain certification to be filed by a certain date; requiring a certain
19 directory to be made available by a certain date; defining certain terms;
20 providing for the effective date of this Act; and generally relating to tobacco
21 product manufacturers, the sale of tobacco products, and the enforcement of the
22 provisions of Chapter 169 of the Acts of the General Assembly of 1999, as
23 amended by Chapter 141 of the Acts of the General Assembly of 2001.

24 BY adding to

25 Article - Business Regulation
26 Section 16-501 through 16-508 to be under the new subtitle "Subtitle 5. Escrow
27 Requirements for Nonparticipating Tobacco Product Manufacturers"
28 Annotated Code of Maryland
29 (1998 Replacement Volume and 2002 Supplement)

30 BY repealing and reenacting, with amendments,

31 Article - State Finance and Procurement
32 Section 7-317(g)

1 Annotated Code of Maryland
2 (2001 Replacement Volume and 2002 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article - Business Regulation**

6 SUBTITLE 5. ESCROW REQUIREMENTS FOR NONPARTICIPATING TOBACCO PRODUCT
7 MANUFACTURERS.

8 16-501.

9 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
10 INDICATED.

11 (B) (1) "BRAND FAMILY" MEANS ALL STYLES OF CIGARETTES SOLD UNDER
12 THE SAME TRADEMARK, REGARDLESS OF WHETHER THE CIGARETTES ARE
13 DIFFERENTIATED FROM ONE ANOTHER BY MEANS OF ADDITIONAL MODIFIERS OR
14 DESCRIPTORS SUCH AS "MENTHOL", "LIGHTS", "KINGS", "100S", OR OTHER
15 DIFFERENTIATION.

16 (2) "BRAND FAMILY" INCLUDES ANY USE OF A BRAND NAME (ALONE OR
17 IN CONJUNCTION WITH ANY OTHER WORD) TRADEMARK, LOGO, SYMBOL, MOTTO,
18 SELLING MESSAGE, RECOGNIZABLE PATTERN OF COLORS, OR ANY OTHER INDICIA
19 OF PRODUCT IDENTIFICATION IDENTICAL OR SIMILAR TO, OR IDENTIFIABLE WITH, A
20 PREVIOUSLY KNOWN BRAND OF CIGARETTES.

21 (C) "CIGARETTE" HAS THE SAME MEANING AS STATED IN SUBSECTION 2(E) OF
22 THE ESCROW ACT.

23 (D) "COMPTROLLER" MEANS THE COMPTROLLER OF THE STATE OR ANY
24 AUTHORIZED AGENT OF THE COMPTROLLER WHO IS RESPONSIBLE FOR COLLECTION
25 OF THE EXCISE TAX ON CIGARETTES.

26 (E) "ESCROW ACT" MEANS CHAPTER 169 OF THE ACTS OF THE GENERAL
27 ASSEMBLY OF 1999 AS AMENDED BY CHAPTER 141 OF THE ACTS OF THE GENERAL
28 ASSEMBLY OF 2001.

29 (F) "LICENSED WHOLESALER" MEANS A WHOLESALER WHO IS LICENSED
30 UNDER TITLE 16, SUBTITLE 2, OF THIS ARTICLE TO ACT AS A WHOLESALER AND
31 INCLUDES ANY PERSON WHO IS AN AUTHORIZED AGENT OF THE LICENSED
32 WHOLESALER FOR THE STAMPING AND DISTRIBUTION OF CIGARETTES.

33 (G) "MASTER SETTLEMENT AGREEMENT" HAS THE SAME MEANING AS STATED
34 IN SUBSECTION 2(F) OF THE ESCROW ACT.

35 (H) "NONPARTICIPATING MANUFACTURER" MEANS ANY TOBACCO PRODUCT
36 MANUFACTURER THAT IS NOT A PARTICIPATING MANUFACTURER.

1 (I) "PARTICIPATING MANUFACTURER" HAS THE MEANING AS STATED IN
2 SECTION II(JJ) OF THE MASTER SETTLEMENT AGREEMENT AND ALL AMENDMENTS
3 TO THE AGREEMENT.

4 (J) "QUALIFIED ESCROW FUND" HAS THE SAME MEANING AS STATED IN
5 SUBSECTION 2(G) OF THE ESCROW ACT.

6 (K) "TOBACCO PRODUCT MANUFACTURER" HAS THE MEANING AS STATED IN
7 SUBSECTION 2(J) OF THE ESCROW ACT.

8 (L) "UNITS SOLD" HAS THE MEANING AS STATED IN SUBSECTION 2(K) OF THE
9 ESCROW ACT.

10 16-502.

11 (A) VIOLATIONS OF THE ESCROW ACT, AN ACT CONCERNING
12 NONPARTICIPATING MANUFACTURERS AND DEPOSITS OF FUNDS INTO ESCROW
13 ACCOUNTS, THREATEN THE INTEGRITY OF THE TOBACCO MASTER SETTLEMENT
14 AGREEMENT, THE FISCAL SOUNDNESS OF THE STATE, AND THE PUBLIC HEALTH.

15 (B) ENACTING PROCEDURAL ENHANCEMENTS WILL HELP PREVENT
16 VIOLATIONS AND AID THE ENFORCEMENT OF THE ESCROW ACT AND THEREBY
17 SAFEGUARD THE MASTER SETTLEMENT AGREEMENT, THE FISCAL SOUNDNESS OF
18 THE STATE, AND THE PUBLIC HEALTH.

19 (C) THE PROVISIONS OF THIS SUBTITLE ARE NOT INTENDED TO AND SHALL
20 NOT BE INTERPRETED TO AMEND THE ESCROW ACT.

21 16-503.

22 (A) A TOBACCO PRODUCT MANUFACTURER WHOSE CIGARETTES ARE SOLD IN
23 THIS STATE, WHETHER DIRECTLY OR THROUGH A DISTRIBUTOR, RETAILER OR
24 SIMILAR INTERMEDIARY, SHALL EXECUTE AND DELIVER, ON A FORM PRESCRIBED BY
25 THE COMPTROLLER, A CERTIFICATION TO THE COMPTROLLER AND ATTORNEY
26 GENERAL NO LATER THAN THE 30TH DAY OF APRIL EACH YEAR, CERTIFYING UNDER
27 PENALTY OF PERJURY THAT, AS OF THE DATE OF THE CERTIFICATION, THE TOBACCO
28 PRODUCT MANUFACTURER EITHER:

29 (1) IS A PARTICIPATING MANUFACTURER; OR

30 (2) IS IN FULL COMPLIANCE WITH THE ESCROW ACT.

31 (B) (1) A PARTICIPATING MANUFACTURER SHALL INCLUDE IN ITS
32 CERTIFICATION A LIST OF ITS BRAND FAMILIES.

33 (2) THE PARTICIPATING MANUFACTURER SHALL UPDATE THE LIST AT
34 LEAST 30 CALENDAR DAYS PRIOR TO ANY ADDITION OR MODIFICATION TO ITS BRAND
35 FAMILIES BY EXECUTING AND DELIVERING A SUPPLEMENTAL CERTIFICATION TO
36 THE ATTORNEY GENERAL AND COMPTROLLER.

1 (C) (1) A NONPARTICIPATING MANUFACTURER SHALL INCLUDE IN ITS
2 CERTIFICATION A COMPLETE LIST OF ALL OF ITS BRAND FAMILIES.

3 (2) THE CERTIFICATION SHALL:

4 (I) SEPARATELY LIST EACH BRAND FAMILY OF CIGARETTES AND
5 THE NUMBER OF UNITS SOLD FOR EACH BRAND FAMILY THAT WAS SOLD IN THE
6 STATE DURING THE PRECEDING CALENDAR YEAR;

7 (II) LIST EACH OF ITS BRAND FAMILIES THAT HAVE BEEN SOLD IN
8 THE STATE AT ANY TIME DURING THE CURRENT CALENDAR YEAR;

9 (III) INDICATE BY AN ASTERISK ANY BRAND FAMILY SOLD IN THE
10 STATE DURING THE PRECEDING CALENDAR YEAR THAT IS NO LONGER BEING SOLD
11 IN THE STATE AS OF THE DATE OF SUCH CERTIFICATION; AND

12 (IV) IDENTIFY BY NAME AND ADDRESS ANY OTHER
13 MANUFACTURER OF SUCH BRAND FAMILIES IN THE PRECEDING OR CURRENT
14 CALENDAR YEAR.

15 (3) THE NONPARTICIPATING MANUFACTURER SHALL UPDATE THE LIST
16 AT LEAST 30 CALENDAR DAYS PRIOR TO ANY ADDITION OR MODIFICATION OF ITS
17 BRAND FAMILIES BY EXECUTING AND DELIVERING A SUPPLEMENTAL
18 CERTIFICATION TO THE ATTORNEY GENERAL AND THE COMPTROLLER.

19 (D) (1) IN THE CASE OF A NONPARTICIPATING MANUFACTURER, THE
20 CERTIFICATION SHALL FURTHER CERTIFY THAT THE NONPARTICIPATING
21 MANUFACTURER:

22 (I) IS REGISTERED TO DO BUSINESS IN THE STATE OR HAS
23 APPOINTED A RESIDENT AGENT FOR SERVICE OF PROCESS AND PROVIDED NOTICE
24 THEREOF AS REQUIRED BY § 16-505 OF THIS SUBTITLE;

25 (II) HAS ESTABLISHED AND CONTINUES TO MAINTAIN A
26 QUALIFIED ESCROW FUND, AND HAS EXECUTED A QUALIFIED ESCROW AGREEMENT
27 THAT HAS BEEN REVIEWED AND APPROVED BY THE ATTORNEY GENERAL AND THAT
28 GOVERNS THE QUALIFIED ESCROW FUND; AND

29 (III) IS IN FULL COMPLIANCE WITH THE ESCROW ACT AND THIS
30 SUBTITLE AND ANY REGULATIONS PROMULGATED IN ACCORDANCE WITH THE
31 ESCROW ACT AND THIS SUBTITLE.

32 (2) THE CERTIFICATION SHALL INCLUDE:

33 (I) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE
34 FINANCIAL INSTITUTION IN WHICH THE NONPARTICIPATING MANUFACTURER HAS
35 ESTABLISHED A QUALIFIED ESCROW FUND REQUIRED PURSUANT TO SUBSECTION
36 3(A)(2) OF THE ESCROW ACT AND ALL REGULATIONS PROMULGATED UNDER IT;

1 (II) THE ACCOUNT NUMBER OF THE QUALIFIED ESCROW FUND
2 AND SUBACCOUNT NUMBER FOR THE STATE OF MARYLAND;

3 (III) THE AMOUNT THE NONPARTICIPATING MANUFACTURER
4 PLACED IN THE FUND FOR CIGARETTES SOLD IN THE STATE DURING THE
5 PRECEDING CALENDAR YEAR, THE DATE AND AMOUNT OF EACH DEPOSIT, AND ANY
6 ADDITIONAL INFORMATION THE COMPTROLLER CONSIDERS NECESSARY TO
7 CONFIRM THE INFORMATION REQUIRED BY THIS SUBPARAGRAPH; AND

8 (IV) THE AMOUNT OF AND DATE OF ANY WITHDRAWAL OR
9 TRANSFER OF FUNDS THE NONPARTICIPATING MANUFACTURER MADE AT ANY TIME
10 FROM SUCH FUND OR FROM ANY OTHER QUALIFIED ESCROW FUND INTO WHICH
11 THE NONPARTICIPATING MANUFACTURER MADE ESCROW PAYMENTS UNDER
12 SUBSECTION 3(A)(2) OF THE ESCROW ACT AND ALL REGULATIONS ADOPTED UNDER
13 THAT SECTION.

14 (E) (1) A TOBACCO PRODUCT MANUFACTURER MAY NOT INCLUDE A BRAND
15 FAMILY IN ITS CERTIFICATION UNLESS:

16 (I) IN THE CASE OF A PARTICIPATING MANUFACTURER, THE
17 PARTICIPATING MANUFACTURER AFFIRMS THAT THE BRAND FAMILY IS DEEMED TO
18 BE ITS CIGARETTES FOR PURPOSES OF CALCULATING ITS PAYMENTS UNDER THE
19 MASTER SETTLEMENT AGREEMENT FOR THE RELEVANT YEAR, IN THE VOLUME AND
20 SHARES DETERMINED PURSUANT TO THE MASTER SETTLEMENT AGREEMENT; AND

21 (II) IN THE CASE OF A NONPARTICIPATING MANUFACTURER, THE
22 NONPARTICIPATING MANUFACTURER AFFIRMS THAT THE BRAND FAMILY IS
23 DEEMED TO BE ITS CIGARETTES FOR PURPOSES OF THE ESCROW ACT.

24 (2) NOTHING IN THIS SECTION MAY BE CONSTRUED AS LIMITING OR
25 OTHERWISE AFFECTING THE STATE'S RIGHT TO MAINTAIN THAT A BRAND FAMILY
26 CONSTITUTES CIGARETTES OF A DIFFERENT TOBACCO PRODUCT MANUFACTURER
27 FOR PURPOSES OF CALCULATING PAYMENTS UNDER THE MASTER SETTLEMENT
28 AGREEMENT OR FOR PURPOSES OF THE ESCROW ACT.

29 (3) THE TOBACCO PRODUCT MANUFACTURER SHALL MAINTAIN ALL
30 INVOICES AND DOCUMENTATION OF SALES AND ANY OTHER INFORMATION RELIED
31 UPON FOR ITS CERTIFICATION FOR A PERIOD OF 5 YEARS, UNLESS OTHERWISE
32 REQUIRED BY LAW TO MAINTAIN THEM FOR A GREATER PERIOD OF TIME.

33 16-504.

34 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE
35 COMPTROLLER SHALL DEVELOP AND MAKE AVAILABLE FOR PUBLIC INSPECTION A
36 DIRECTORY LISTING ALL TOBACCO PRODUCT MANUFACTURERS THAT HAVE
37 PROVIDED CURRENT AND ACCURATE CERTIFICATIONS CONFORMING TO THE
38 REQUIREMENTS OF § 16-503 OF THIS SUBTITLE AND ALL BRAND FAMILIES THAT ARE
39 LISTED IN SUCH CERTIFICATIONS.

1 (B) (1) THE COMPTROLLER MAY NOT INCLUDE OR RETAIN IN THE
2 DIRECTORY THE NAME OR BRAND FAMILIES OF ANY NONPARTICIPATING
3 MANUFACTURER THAT FAILS TO PROVIDE THE REQUIRED CERTIFICATION OR
4 WHOSE CERTIFICATION THE COMPTROLLER DETERMINES IS NOT IN COMPLIANCE
5 WITH § 16-503(C)(3) AND (D) OF THIS SUBTITLE, UNLESS THE COMPTROLLER HAS
6 DETERMINED THAT THE VIOLATION HAS BEEN CURED TO THE SATISFACTION OF
7 THE COMPTROLLER.

8 (2) NEITHER A TOBACCO PRODUCT MANUFACTURER NOR A BRAND
9 FAMILY MAY BE INCLUDED OR RETAINED IN THE DIRECTORY IF THE COMPTROLLER
10 CONCLUDES, IN THE CASE OF A NONPARTICIPATING MANUFACTURER, THAT:

11 (I) ANY ESCROW PAYMENT REQUIRED UNDER SUBSECTION 3(A)(2)
12 OF THE ESCROW ACT FOR ANY PERIOD FOR ANY BRAND FAMILY, WHETHER OR NOT
13 LISTED BY SUCH NONPARTICIPATING MANUFACTURER, HAS NOT BEEN FULLY PAID
14 INTO A QUALIFIED ESCROW FUND GOVERNED BY A QUALIFIED ESCROW AGREEMENT
15 THAT HAS BEEN APPROVED BY THE ATTORNEY GENERAL; OR

16 (II) ANY OUTSTANDING FINAL JUDGMENT, INCLUDING INTEREST
17 ON THE JUDGEMENT, FOR A VIOLATION OF THE ESCROW ACT HAS NOT BEEN FULLY
18 SATISFIED FOR THE BRAND FAMILY OR THE MANUFACTURER.

19 (3) THE COMPTROLLER SHALL UPDATE THE DIRECTORY AS NECESSARY
20 IN ORDER TO CORRECT MISTAKES AND TO ADD OR REMOVE A TOBACCO PRODUCT
21 MANUFACTURER OR BRAND FAMILY TO KEEP THE DIRECTORY IN CONFORMITY WITH
22 THE REQUIREMENTS OF THIS SUBTITLE.

23 (4) EACH LICENSED WHOLESALER SHALL PROVIDE AND UPDATE AS
24 NECESSARY AN ELECTRONIC MAIL ADDRESS TO THE COMPTROLLER FOR THE
25 PURPOSE OF RECEIVING ANY NOTIFICATIONS AS MAY BE REQUIRED BY THIS
26 SUBTITLE.

27 (C) IT SHALL BE UNLAWFUL FOR ANY PERSON TO:

28 (1) AFFIX A STAMP TO A PACKAGE OR OTHER CONTAINER OF
29 CIGARETTES OF A TOBACCO PRODUCT MANUFACTURER OR BRAND FAMILY NOT
30 INCLUDED IN THE DIRECTORY; OR

31 (2) SELL, OFFER OR POSSESS FOR SALE IN THIS STATE, OR IMPORT FOR
32 PERSONAL CONSUMPTION IN THIS STATE, CIGARETTES OF A TOBACCO PRODUCT
33 MANUFACTURER OR BRAND FAMILY NOT INCLUDED IN THE DIRECTORY.

34 16-505.

35 (A) (1) ANY NONRESIDENT OR FOREIGN NONPARTICIPATING
36 MANUFACTURER THAT HAS NOT REGISTERED TO DO BUSINESS IN THE STATE AS A
37 FOREIGN CORPORATION OR BUSINESS ENTITY SHALL, AS A CONDITION PRECEDENT
38 TO HAVING ITS BRAND FAMILIES INCLUDED OR RETAINED IN THE DIRECTORY
39 DESCRIBED IN § 16-504 OF THIS SUBTITLE, APPOINT AND CONTINUALLY ENGAGE
40 WITHOUT INTERRUPTION THE SERVICES OF AN AGENT IN THE UNITED STATES TO

1 ACT AS AN AGENT FOR THE SERVICE OF PROCESS ON THE NONRESIDENT OR
2 FOREIGN NONPARTICIPATING MANUFACTURER.

3 (2) ANY PROCESS AND ANY ACTION OR PROCEEDING AGAINST THE
4 NONRESIDENT OR FOREIGN NONPARTICIPATING MANUFACTURER CONCERNING OR
5 ARISING OUT OF THE ENFORCEMENT OF THIS SUBTITLE OR THE ESCROW ACT MAY
6 BE SERVED IN ANY MANNER AUTHORIZED BY LAW.

7 (3) THE SERVICE OF PROCESS SHALL CONSTITUTE LEGAL AND VALID
8 SERVICE OF PROCESS ON THE NONPARTICIPATING MANUFACTURER. THE
9 NONPARTICIPATING MANUFACTURER SHALL PROVIDE, TO THE SATISFACTION OF
10 THE COMPTROLLER AND THE ATTORNEY GENERAL, THE NAME, ADDRESS, PHONE
11 NUMBER, AND PROOF OF THE APPOINTMENT AND AVAILABILITY OF THE AGENT TO
12 THE COMPTROLLER AND THE ATTORNEY GENERAL.

13 (B) (1) THE NONPARTICIPATING MANUFACTURER SHALL PROVIDE:

14 (I) NOTICE TO THE COMPTROLLER AND THE ATTORNEY GENERAL
15 AT LEAST 30 CALENDAR DAYS PRIOR TO TERMINATION OF THE AUTHORITY OF AN
16 AGENT; AND

17 (II) PROOF TO THE SATISFACTION OF THE ATTORNEY GENERAL OF
18 THE APPOINTMENT OF A NEW AGENT NOT LESS THAN 5 CALENDAR DAYS PRIOR TO
19 THE TERMINATION OF AN EXISTING AGENT APPOINTMENT.

20 (2) IF AN AGENT TERMINATES AN AGENCY APPOINTMENT, THE
21 NONPARTICIPATING MANUFACTURER SHALL:

22 (I) NOTIFY THE COMPTROLLER AND THE ATTORNEY GENERAL OF
23 THE TERMINATION WITHIN 5 CALENDAR DAYS; AND

24 (II) INCLUDE PROOF TO THE SATISFACTION OF THE ATTORNEY
25 GENERAL OF THE APPOINTMENT OF A NEW AGENT.

26 16-506.

27 (A) (1) NOT LATER THAN 20 DAYS AFTER THE END OF EACH CALENDAR
28 QUARTER, AND MORE FREQUENTLY IF SO DIRECTED BY THE COMPTROLLER, EACH
29 LICENSED WHOLESALER SHALL SUBMIT INFORMATION AS THE COMPTROLLER
30 REQUIRES TO FACILITATE COMPLIANCE WITH THIS SUBTITLE, INCLUDING, BUT NOT
31 LIMITED TO, A LIST BY BRAND FAMILY OF THE TOTAL NUMBER OF CIGARETTES, OR
32 IN THE CASE OF ROLL-YOUR-OWN CIGARETTES, THE EQUIVALENT STICK COUNT
33 FOR WHICH THE LICENSED WHOLESALER AFFIXED STAMPS DURING THE PREVIOUS
34 CALENDAR QUARTER OR OTHERWISE PAID THE TAX DUE FOR THE CIGARETTES.

35 (2) THE LICENSED WHOLESALER SHALL MAINTAIN AND MAKE
36 AVAILABLE TO THE COMPTROLLER FOR A PERIOD OF 5 YEARS ALL INVOICES AND
37 DOCUMENTATION OF SALES OF ALL NONPARTICIPATING MANUFACTURER
38 CIGARETTES AND ANY OTHER INFORMATION RELIED ON IN REPORTING TO THE
39 COMPTROLLER.

1 (B) (1) THE COMPTROLLER IS AUTHORIZED TO DISCLOSE TO THE ATTORNEY
2 GENERAL ANY INFORMATION RECEIVED UNDER THIS SUBTITLE AND REQUESTED BY
3 THE ATTORNEY GENERAL FOR PURPOSES OF DETERMINING COMPLIANCE WITH AND
4 ENFORCEMENT OF THE PROVISIONS OF THIS SUBTITLE.

5 (2) THE COMPTROLLER AND THE ATTORNEY GENERAL SHALL SHARE
6 WITH EACH OTHER THE INFORMATION RECEIVED UNDER THIS SUBTITLE AND MAY
7 SHARE THE INFORMATION WITH OTHER FEDERAL, STATE OR LOCAL AGENCIES ONLY
8 FOR PURPOSES OF ENFORCEMENT OF THIS SUBTITLE, THE ESCROW ACT, OR
9 CORRESPONDING LAWS OF OTHER STATES.

10 (C) THE ATTORNEY GENERAL MAY REQUIRE AT ANY TIME FROM THE
11 NONPARTICIPATING MANUFACTURER PROOF, FROM THE FINANCIAL INSTITUTION
12 IN WHICH THE MANUFACTURER HAS ESTABLISHED A QUALIFIED ESCROW FUND FOR
13 THE PURPOSE OF COMPLIANCE WITH THE ESCROW ACT, OF THE AMOUNT OF MONEY
14 IN THE ESCROW FUND, EXCLUSIVE OF INTEREST, THE AMOUNT AND DATE OF EACH
15 DEPOSIT TO THE ESCROW FUND AND THE AMOUNT AND DATE OF EACH
16 WITHDRAWAL FROM THE ESCROW FUND.

17 (D) IN ADDITION TO ANY OTHER INFORMATION REQUIRED TO BE SUBMITTED
18 BY LAW, THE COMPTROLLER MAY REQUIRE A LICENSED WHOLESALER OR TOBACCO
19 PRODUCT MANUFACTURER TO SUBMIT ANY ADDITIONAL INFORMATION INCLUDING,
20 BUT NOT LIMITED TO, SAMPLES OF THE PACKAGING OR LABELING OF EACH BRAND
21 FAMILY, AS IS NECESSARY TO ENABLE THE ATTORNEY GENERAL TO DETERMINE
22 WHETHER A TOBACCO PRODUCT MANUFACTURER IS IN COMPLIANCE WITH THIS
23 SUBTITLE.

24 (E) (1) TO PROMOTE COMPLIANCE WITH THIS SUBTITLE, THE
25 COMPTROLLER MAY ADOPT REGULATIONS REQUIRING A TOBACCO PRODUCT
26 MANUFACTURER SUBJECT TO THE REQUIREMENTS OF § 16-503(A) OF THIS SUBTITLE
27 TO MAKE THE ESCROW DEPOSITS REQUIRED IN QUARTERLY INSTALLMENTS DURING
28 THE YEAR IN WHICH THE SALES COVERED BY THE DEPOSITS ARE MADE.

29 (2) THE COMPTROLLER MAY REQUIRE PRODUCTION OF INFORMATION
30 SUFFICIENT TO ENABLE THE COMPTROLLER TO DETERMINE THE ADEQUACY OF THE
31 AMOUNT OF THE INSTALLMENT DEPOSIT.

32 16-507.

33 (A) (1) IN ADDITION TO OR INSTEAD OF ANY OTHER CIVIL OR CRIMINAL
34 REMEDY PROVIDED BY LAW, ON A DETERMINATION THAT A LICENSED WHOLESALER
35 HAS VIOLATED § 16-504(C) OF THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER
36 THAT SECTION, THE COMPTROLLER MAY REVOKE OR SUSPEND THE LICENSE OF ANY
37 LICENSED WHOLESALER IN THE MANNER PROVIDED § 16-211 OF THIS ARTICLE.

38 (2) EACH STAMP AFFIXED AND EACH OFFER TO SELL CIGARETTES IN
39 VIOLATION OF § 16-504(C) OF THIS SUBTITLE SHALL CONSTITUTE A SEPARATE
40 VIOLATION.

1 (3) THE COMPTROLLER MAY ALSO IMPOSE A CIVIL PENALTY IN AN
2 AMOUNT NOT TO EXCEED THE GREATER OF 500% OF THE RETAIL VALUE OF THE
3 CIGARETTES SOLD OR \$5,000 ON A DETERMINATION OF VIOLATION OF § 16-504(C) OF
4 THIS SUBTITLE OR ANY REGULATIONS ADOPTED UNDER THAT SECTION.

5 (4) THE PENALTY SHALL BE IMPOSED IN THE MANNER PROVIDED
6 UNDER § 16-212 OF THIS ARTICLE.

7 (B) (1) ANY CIGARETTES THAT HAVE BEEN SOLD, OFFERED FOR SALE OR
8 POSSESSED FOR SALE IN THIS STATE, OR IMPORTED FOR PERSONAL CONSUMPTION
9 IN THIS STATE IN VIOLATION OF § 16-504(C) OF THIS SUBTITLE SHALL BE DEEMED
10 CONTRABAND UNDER §§ 13-836, 13-837, AND 13-839 OF THE TAX - GENERAL ARTICLE,
11 AND THOSE CIGARETTES SHALL BE SUBJECT TO SEIZURE AND FORFEITURE AS
12 PROVIDED IN THOSE SECTIONS.

13 (2) ALL CIGARETTES SEIZED AND FORFEITED MAY NOT BE RESOLD AND
14 SHALL BE DESTROYED.

15 (C) (1) THE ATTORNEY GENERAL, ON BEHALF OF THE COMPTROLLER, MAY
16 SEEK AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF §
17 16-504(C), § 16-506(A) OR § 16-506(D) OF THIS SUBTITLE BY A LICENSED WHOLESALER
18 AND COMPEL THE LICENSED WHOLESALER TO COMPLY WITH SUCH SECTIONS.

19 (2) IN ANY ACTION BROUGHT UNDER THIS SECTION, THE STATE SHALL
20 BE ENTITLED TO RECOVER THE COSTS OF INVESTIGATION, COSTS OF THE ACTION,
21 AND REASONABLE ATTORNEY'S FEES.

22 (D) A PERSON WHO SELLS, DISTRIBUTES, ACQUIRES, HOLDS, OWNS,
23 POSSESSES, TRANSPORTS, IMPORTS, OR CAUSES TO BE IMPORTED, CIGARETTES
24 THAT THE PERSON KNOWS OR SHOULD KNOW ARE INTENDED FOR DISTRIBUTION OR
25 SALE IN THE STATE IN VIOLATION OF § 16-504(C) OF THIS SUBTITLE IS GUILTY OF A
26 MISDEMEANOR, AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$5,000
27 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

28 16-508.

29 (A) A DETERMINATION OF THE COMPTROLLER TO OMIT OR TO DELETE FROM
30 THE DIRECTORY DESCRIBED IN § 16-504 OF THIS SUBTITLE A BRAND FAMILY OR
31 TOBACCO PRODUCT MANUFACTURER SHALL BE SUBJECT TO REVIEW IN THE
32 MANNER PRESCRIBED BY TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT
33 ARTICLE.

34 (B) THE COMPTROLLER MAY ADOPT REGULATIONS NECESSARY TO
35 EFFECTUATE THE PURPOSES OF THIS SUBTITLE.

36 (C) IN ANY ACTION BROUGHT BY THE STATE TO ENFORCE THIS SUBTITLE,
37 THE STATE SHALL BE ENTITLED TO RECOVER THE COSTS OF INVESTIGATION,
38 EXPERT WITNESS FEES, COSTS OF THE ACTION, AND REASONABLE ATTORNEY'S
39 FEES.

1 (D) (1) IF A COURT DETERMINES THAT A PERSON HAS VIOLATED THIS
2 SUBTITLE, THE COURT SHALL ORDER ANY PROFITS, GAIN, GROSS RECEIPTS, OR
3 OTHER BENEFIT FROM THE VIOLATION TO BE PAID TO THE STATE TREASURER FOR
4 DEPOSIT INTO THE CIGARETTE RESTITUTION FUND ESTABLISHED UNDER § 7-317 OF
5 THE STATE FINANCE AND PROCUREMENT ARTICLE.

6 (2) UNLESS OTHERWISE EXPRESSLY PROVIDED, THE REMEDIES OR
7 PENALTIES PROVIDED BY THIS SUBTITLE ARE CUMULATIVE TO EACH OTHER, AND TO
8 THE REMEDIES OR PENALTIES AVAILABLE UNDER ALL OTHER LAWS OF THIS STATE.

9 **Article - State Finance and Procurement**

10 7-317.

11 (g) (1) Amounts may only be expended from the Fund through
12 appropriations in the State budget bill as provided in this subsection.

13 (2) The Governor shall include in the annual budget bill appropriations
14 from the Fund equivalent to the lesser of \$100,000,000 or 90% of the funds estimated
15 to be available to the Fund in the fiscal year for which the appropriations are made.

16 (3) For each fiscal year for which appropriations are made, at least 50%
17 of the appropriations shall be made for those purposes enumerated in subsection
18 (f)(1)(i), (ii), and (iii)1 through 9 of this section subject to the requirement of
19 subsection (e)(2) of this section.

20 (4) For each of fiscal years 2003 through 2006, at least 25% of the
21 appropriations shall be made for the purposes of the Maryland Medical Assistance
22 Program.

23 (5) FOR EACH FISCAL YEAR FOR WHICH APPROPRIATIONS ARE MADE,
24 0.15% OF THE FUND SHALL BE APPROPRIATED FOR THE PURPOSES OF
25 ENFORCEMENT OF SUBTITLE 5, TITLE 16 OF THE BUSINESS REGULATION ARTICLE.

26 [(5)] (6) Any additional appropriations, not subject to paragraph (3) or
27 paragraph (4) of this subsection, may be made for any lawful purpose.

28 SECTION 2. AND BE IT FURTHER ENACTED, That if a court of competent
29 jurisdiction finds that the provisions of this Act and of Chapter 169 of the Acts of the
30 General Assembly of 1999, as amended by Chapter 141 of the Acts of the General
31 Assembly of 2001, conflict and cannot be harmonized, then the provisions of Chapter
32 169 of the Acts of the General Assembly of 1999, as amended by Chapter 141 of the
33 Acts of the General Assembly of 2001, shall control. If any section, subsection,
34 subdivision, paragraph, sentence, clause or phrase of this Act causes Chapter 169 of
35 the Acts of the General Assembly of 1999, as amended by Chapter 141 of the Acts of
36 the General Assembly of 2001, to no longer constitute a Qualifying or Model Statute,
37 as those terms are defined in the Master Settlement Agreement, then that portion of
38 this Act shall not be valid. If any section, subsection, subdivision, paragraph,
39 sentence, clause or phrase of this Act is for any reason held by a court of competent

1 jurisdiction to be invalid, unlawful, or unconstitutional, the decision of the court does
2 not affect the validity of the remaining portions of this Act or any part of this Act.

3 SECTION 3. AND BE IT FURTHER ENACTED, That under this Act:

4 (a) the first report of licensed wholesalers required by § 16-506(a) of the
5 Business Regulation Article, as added by Section 1 of this Act, shall be due no later
6 than August 1, 2003;

7 (b) the first certification by a tobacco product manufacturer required by §
8 16-503(a) of the Business Regulation Article, as added by Section 1 of this Act, shall
9 be due no later than August 15, 2003; and

10 (c) the directory required by § 16-504(a) of the Business Regulation Article, as
11 added by Section 1 of this Act, shall be made available by the Comptroller no later
12 than November 1, 2003.

13 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 June 1, 2003.